IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 257 of 1999

in

SPECIAL CIVIL APPLICATIONNo 4349 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRMALABEN M DAVE

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. LETTERS PATENT APPEAL No. 257 of 1999

MR JF SHAH for Appellant No. 1

MR KH BAXI for Respondent No. 1

DELETED for Respondent No. 2

MR LR PUJARI, AGP, for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The sole question which has emerged in this Letters Patent Appeal under clause 15 of the Letters Patent against the judgment and order of the learned single Judge in Special Civil Application No.4349 of 1997 is, as to whether the appellant-original petitioner is entitled to the benefit of stepping up and to get the order of grant of stepping up of pay dated 25.8.94 (which subsequently came to be revoked being not admissible and permissible) and the resultant monetary and pensionary benefits or not, to which the learned single Judge has positively and specifically replied in the negative.

A conspectus of relevant and material factual profile leading to the rise of this Letters Patent Appeal may, shortly, be articulated so as to appreciate the merits and challenge against the appeal.

The appellant, who is hereinafter referred to as the original petitioner, for the sake of convenience, came to be, initially, appointed in the erstwhile School Board on 19.8.54, and came to be transferred to Bhavnagar District Panchayat Service with effect from 1.4.63 and retired on superannuation on 28.2.89. The petitioner was granted benefit of stepping up of her pay with effect from 22.2.72 by the order dated 25.8.94 recorded by the first respondent, District Development Officer of Bhavnagar District, Bhavnagar subject to the approval by the authority concerned or the auditing agency. The aforesaid order in favour of the original petitioner came to be revoked for want of approval by the Audit Department by the order dated 14.8.97.

The petitioner, thereupon, directly invoked the constitutional writ remedy provided under Article 226 of the Constitution of India and sought writ in the nature of mandamus or by any other writ or direction against the respondents to give the benefits of the earlier order in his favour, which subsequently came to be revoked and to pay him admissible revised monetary benefits, including pensionary benefits.

The following aspects are, also, material and indisputable and therefore, they are required to be placed in focus.

(1) The State Government introduced selection grade of Rs.325-400 for the post of Senior Clerk, Accounts Clerk, Accountant and subsequently clerks drawing also the pay-scale of Rs.200-340 for the purpose of grant of selection grade.

(2) The respondent No.1 granted selection grade to one Mr.R.S.Jodhani who was junior to the petitioner. The selection grade was given to him in the cadre of Senior Clerk.

(3) The said junior to the original petitioner came to be promoted from the cadre of Junior clerk to the higher cadre of Senior Clerk with effect from 23.6.66, whereas, the petitioner came to promoted with effect from 16.2.70.

(4) The original petitioner was at Sr.No.42 in the gradation or seniority list in the cadre of Junior Clerk, whereas, his junior who came to be promoted earlier was at Sr.No. 81.

(5) The seniority, obviously, therefore, of the junior in the higher cadre was higher than the original petitioner. In the seniority list of senior Clerk, the original petitioner was at Sr.No. 8 whereas the junior to him was at Sr.No.4.

(6) The case of the original petitioner has been that by the order dated 25.8.94, respondent No.1, DDO had granted stepping up of his pay to that of her junior Shri Jodhani in the pay-scale of Rs.325/- with effect from 22.2.72 which was wrongly revoked and cancelled.

The respondent authority has, inter alia, contended that in fact, the case of the original petitioner was sent to the Assistant Examiner of Local Fund Accounts of the District and the said Office by its letter dated 31.1.97 observed and stated that the original petitioner was promoted late in the year 1970 and therefore, there was no provision for giving stepping up for late promotion and on the said basis, not only the petitioner's order for stepping up had been cancelled but orders giving stepping up benefits to similar other persons had also been cancelled and revoked.

The learned single Judge upon examination of the factual profile and the relevant proposition of the rules and the

law, rejected the petition holding that the petitioner is not entitled to the benefit of stepping up of pay since his junior Mr.Jodhani got promoted in the cadre of Senior Clerk in 1966 and the petitioner came to be promoted in the same cadre in 1970. It was, therefore, observed by the learned single Judge that the original petitioner has lost seniority over Mr.Jodhani and, therefore, her claim for stepping up of pay is not entertainable as there would not arise any question of there being anomalous situation in regard to the fixation of the pay on the doctrine of parity of pay in certain circumstances between the senior and junior as provided in the Government Resolutions.

The learned advocate for the appellant, original petitioner, has strenuously submitted before us that refusal to grant the benefit of stepping up of pay and the summary rejection of the petition is erroneous and misconceived.

Learned advocate for the appellant has reiterated the contentions before us and has taken us through the record and, also, has placed reliance on a circular dated 7.5.81 of the State Government. He has pleaded that the appellant original-petitioner was senior to Mr.Jodhani in the cadre of Junior Clerks and after her promotion as Senior Clerk, she would be entitled to receive the same pay as that of Shri Jodhani since Mr.Jodhani was junior to her. In support of this contention, the aforesaid circular dated 7.5.81 is relied on. Learned advocate Mr.Baxi for the respondent No.1 and learned Asstt. Government Pleader appearing for the other respondents have supported the impugned judgment and have refuted the submissions raised on behalf of the appellant.

After having taken into consideration the factual profile emerging from the record of the present appeal and the rival submissions coupled with the relevant rule provision and the settled proposition of law with regard to the grant of benefits of stepping up of pay, we are, clearly, of the opinion that the claim advanced by the appellant for stepping up of her pay and, that too, on the basis of the circular of the Government dated 7.5.81 is totally unsupportable, unacceptable and misconceived. The view taken by the learned single Judge summarily rejecting the writ petition is quite justified, requiring no interference in exercise of our powers under clause 15 of the Letters Patent.

The circular which is relied on for the first time in this Letters Patent Appeal is permitted to be produced in

the larger interest of justice, though, ordinarily, reliance or the production of documents, at a later stage may not be permissible without special reasons. After having given our anxious thoughts and consideration to the said circular, the underlying purpose of the issuance of the said circular is to make provision for the grant of selection grade in the cadre of Junior Clerks on the basis of pre-1977 common seniority of the clerks. Therefore, the reliance on the aforesaid circular of the State Government for the purpose of stepping of pay is of no avail to the appellant original petitioner.

Undoubtedly, there is purpose and policy behind the provision and principle of giving benefit of stepping up of pay. It is to see, in a given situation, that the senior colleagues upon promotion should not have the occasion for heart-burning and a sense of frustration, disappointment or dissatisfaction when the junior in the higher cadre of promotion for some reasons like special pay, etc. is drawing higher pay or emoluments than the senior. It may happen in a given case that there may be anomaly in terms of pay of senior colleague and junior which is directly attributable to the provisions of Government resolution of the Financial Department dated 5.1.65. This is just to highlight and therefore, an illustration is drawn. There are many other such situation which are dealt with by different circulars and resolutions of the State Government to which we are not concerned, at this stage. Nothing has been, successfully shown or spelt out from the record which would directly uphold or support the claim of the petitioner in the fact situation. However, it may be stated, at this stage that in order to redress the rightful grievance of a senior by grant of benefit of stepping up of pay on the doctrine of parity of pay of senior with the junior upon promotion in certain given situation is also provided in rule 41-A and 51 of the Bombay Civil Services Rules 1959. We have been taken through the aforesaid Rules. We have given our anxious consideration to those provisions and we find that the claim made by the original petitioner is, also, not drawing any statutory strength or any assistance. It seems from the aforesaid provisions that anomalous situation may arise in which a Government servant on promotion to a higher post may become entitled to get more pay than what his senior colleague earlier on such posts in the same line of promotion and the same way may be receiving on the crucial date, and obviously, in many such cases, once such an anomaly is generated, it would be a creator and perpetrator of considerable frustration, dissatisfaction, heart-burning and disincentiveness. It is, therefore, provision is made to rectify such

anomalous situation by stepping up of the pay of the senior to the level of the pay admissible to the junior Government servant on his promotion to higher post irrespective of the fact whether senior Government servant has been confirmed in the higher post prior to the date of the promotion or not. Conditions of varying nature and degree are imposed in different circular and resolutions of the Government with regard to the benefit of stepping up of pay to which we are not vitally concerned at this stage. In so far as the claim of the petitioner is concerned, the learned single Judge has rightly rejected the petition. It appears that for whatever reasons, the original petitioner who was granted the benefit of stepping up of pay by the then District Development Officer of the Bhavnagar District Panchayat by his order dated 25.8.94 in ignorance of the real rule provision and position which upon critical assessment, evaluation and examination by audit authorities, came to be cancelled and revoked. The ground on which it is revoked is, also, fully, justified.

A person who is junior in the feeder cadre gets promotion earlier than his senior and starts drawing permissible initial pay could not be claimed by his senior on his getting promotion later on the ground that junior to him in the feeder cadre when the entire scenario in the seniority in the higher cadre is different that his pay should be stepped up on the presumed anomaly of pay between himself and his erstwhile junior in the feeder cadre. This proposition of law is aptly, amply and extensively expounded by the Apex Court in the case of Union of India v. M. Suryanarayana Rao, AIR 1998 SC 2992 in which reliance was placed on the decision of the Apex Court rendered by a Three Judge Bench in Union of India v. R. Swaminathan, (1997) 7 SCC 690.

In view of the aforesaid discussion and the rule provisions and the case law analysed hereinabove, we have no hesitation in finding that this Letters Patent Appeal deserve only and only one fate of dismissal. Accordingly, it is dismissed with no order as to costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)